proposal for a used-car device, but the board has ruled that the $100-to-$150-installed cost is too high. The American Machine-Chromalloy combine estimates its device, which has been approved, will cost the consumer an estimated $81.50, including installation. The combine, however, said it is working to lower costs to $65.

Some 70 percent of a car's fumes is emitted through the exhaust, the other 30 percent through the crankcase. Auto makers began voluntarily in 1961 installing crankcase devices on their cars. These devices became mandatory in California on all new cars with the 1963 model year and on all used cars in a 13-county area.

William Nissen, the pollution control board chairman, said that with combined crankcase devices and exhaust systems, some 90 percent of "smog-forming hydrocarbons" from autos would be controlled. This is expected to ease smog conditions in urban areas, but it won't eliminate the problem altogether. Smog also is caused by other irritants.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin [Mr. PROXMIRE].

Mr. MORTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, the amendment which is now pending to the Dirksen amendment is my amendment. It provides that on page 2, line 15, after the word "shall," and before the words "be deemed," there be inserted the word "not," so that the section of the bill, in subsection (b), without reading all of it, would provide:

> A stay for the period necessary * * * shall not be deemed to be in the public interest in the absence of highly unusual circumstances.

As I said before, this amendment of of mine has a great deal of merit. The arguments I have heard so far in favor of the Dirksen-Mansfield amendment have been that throughout the country there are certain unusual situations—for example, in Oklahoma and elsewhere, where an election which had already taken place might be set aside, and where people who are holdover State Senators, for example, would be removed from office or would lose their office.

These circumstances are unusual; and it might be proper and desirable for Congress to prevent that kind of situation.

On the other hand, let us consider the situation in Wisconin. In Wisconsin public officials won an apportionment, after a long struggle. It was a bipartisan struggle. Democrats and Republicans were on both sides of the issue. We finally achieved an almost mathematically precise population representation in both the State senate and State assembly.

Under the Dirksen-Mansfield compromise proposal, our near perfect 1964 apportionment might be voided. All the struggle and solid achievement of years might be nullified. I talked on the phone this morning with Roland Day, the brilliant Madison lawyer who handled our successful reapportionment fight for the Governor before our State legislature. Mr. Day is deeply concerned that the Dirksen amendment might result in Federal court action in Wisconsin on the basis of a request by a member of the State legislature who has been apportioned out of his seat. This action could not only stay the election under the new apportionment, it could require that candidates for the Wisconsin Legislature would have to file again on the old legislative district basis. So this apportionment which we finally achieved after many years of great effort on the part of Democrats and Republicans, newspapers, and other agencies would be nullified.

I say that because the Mansfield-Dirksen amendment provides:

> Any court of the United States having jurisdiction of an action in which the constitutionality of the apportionment of representation in a State legislature or either house thereof is drawn in question shall, upon application, stay the entry or execution of any order interfering with the conduct of the State government, the proceedings of any house of the legislature thereof, or of any convention, primary, or election, for such period as will be in the public interest.

Because of this provision any Federal court in Wisconsin would have jurisdiction.

The apportionment was effected in May or June of this year. Candidates for the State legislature filed in 100 assembly districts and in 16 or 17 State senate districts. July 11 was the deadline. They filed on the basis of the Wisconsin State Supreme Court apportionment.

Many of the candidates—not all of them, but many of them—would be filing in districts which are nonexistent, if the apportionment action by the Wisconsin Supreme Court were set aside. The Court would be in the position where it would be hard to comply with the law without setting it aside, in view of the Dirksen language that a stay shall be granted for the period necessary "to permit any State election of representatives occurring before January 1, 1966, to be conducted in accordance with the laws of such State in effect immediately preceding any adjudication of unconstitutionality."

That means that it would have to be based on the apportionment that preceded the apportionment by our State supreme court late this spring.

That would mean—and I cannot see any other construction which makes any sense, offhand—that our very painfully achieved and almost perfect apportionment would go out the window. There is a saving clause in the Dirksen amendment in the words "in the absence of highly unusual circumstances," and I would be hopeful that that might sustain Wisconsin in the Court. But that is only a hope.

On the other hand, the distinguished junior Senator from Illinois [Mr. DIRKSEN], who is the author of the amendment, made a statement, according to the New York Times of Thursday, August 13.

The article states that the Senator from Illinois felt that the compromise "retained almost all of the mandatory character of the legislation he proposed last week as an amendment to the foreign aid bill."

The article continues:

> Mr. DIRKSEN said the legislation was about 99⅔-percent mandatory in requiring district judges to stay apportionment proceedings.
>
> "This is about as mandatory as you can get," he said, "and still leave the door slightly open so that you don't absolutely foreclose the courts from considering [apportionment] cases. Otherwise, it might founder on the Constitution."

The article continues:

> The only exception to these mandatory requirements, what Mr. DIRKSEN called "the slightly open door," was provided in a phrase saying that stays need not be granted in "highly unusual circumstances."

The 99⅔-percent mandatory character is very discouraging for Wisconsin, and would make it very difficult for our State, in view of the fact that our primary election for the State legislature will be held in less than 4 weeks. It probably would have to be postponed. Attorney Day, my staff, and I went over the Wisconsin law this morning at some length. There is a possibility, under these circumstances, that, with the primary election postponed, and with all that would have to take place between the primary and the general election, our general election would have to be postponed, and the present sitting State legislature would simply carry over.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. LAUSCHE. If the situation is so critical, with only 4 weeks being available, why did not the Supreme Court give some consideration to that possible contingency, and allow, in its ruling, time under which, prudently and carefully, studies could be made and decisions rendered?

Mr. PROXMIRE. The Supreme Court acted with great prudence. The Supreme Court of Wisconsin provided apportionment in ample time late last spring, and candidates have filed in accordance with the Supreme Court decision. Now, under the Dirksen-Mansfield amendment, that action would have to be set aside, and they would have to start all over. They would have to go back to the districts in effect before May 14, 1964. We have a very serious problem.

Mr. LAUSCHE. That is a special situation. I am talking about the States which have not taken any action, and which are pressed for time. If the Court's order is to be obeyed, it can be done only after hasty judgment.

Mr. PROXMIRE. Under those circumstances, I believe that my amendment would meet the situation, although

I am sure the distinguished junior Senator from Illinois [Mr. DIRKSEN] will disagree. My amendment provides that a State shall not be deemed to be in the public interest in the absence of highly unusual circumstances. In Oklahoma, there may be highly unusual circumstances; perhaps in Ohio, too.

However, "highly unusual circumstances" would have to refer to a situation in which an election had been held, as is true in some States, and the court would otherwise throw out the election on the ground that the election was not in accordance with the one-vote, one-man principle. I believe that a stay under those circumstances would be logical. My amendment is drawn so that the basic principle would be upheld by Congress, but it would still leave the door open a little so that it would be possible to make adjustments where they would have to be made.

Mr. LAUSCHE. How would the members of the two houses be chosen?

Mr. PROXMIRE. We are very fortunate in Wisconsin. Both houses of the legislature in Wisconsin are apportioned strictly on the basis of population. We have not always been very good in complying with the law. We have at times let 20 or 30 years go by without complying with it. Now we have complied with it. This apportionment might now be thrown out by the Dirksen-Mansfield amendment.

Mr. LAUSCHE. In the case of Wisconsin, it is simple, in view of the constitutional provision. But what about the other States which, for more than 100 years, have proceeded on the theory that the upper house shall be chosen on the basis of geographical representation, and the lower house on the basis of population? Why not allow them time to solve the problem?

Mr. PROXMIRE. I believe that that is perfectly proper. In some cases, the courts have undoubtedly been too precipitous and requested or required action that is difficult to take. But I am sure the Senator from Ohio undertsands the position of the courts. This is the toughest kind of problem for a legislator to solve. Legislators are being asked to apportion themselves or their friends out of jobs. The tendency of legislatures is to slow down, to drag their feet. They always need to be pushed. There will always be that clash. The longer the remedy is postponed, the longer will circumstances exist in which serious difficulty is involved.

Merely to require deliberate action by the courts, to leave the door open, so that the legislatures can adjust on a gradual basis, makes sense.

There are some people—perhaps not a majority as I might hope—who do not think the one-man-one-vote legislature should be based on something other than population. Those who feel that way would be enthusiastic for the Dirksen proposal, so that a constitutional amendment could be submitted by Congress to the legislatures throughout the country, so as to knock out the one-man, one-vote principle forever. That would be the effect.

Mr. LAUSCHE. There are many who subscribe to the doctrine that there must be insurance that in a legislative body neither one segment of the economy nor another shall dominate. It is for that reason that for more than 100 years Ohio has had a two-house legislature, one house chosen on the basis of geographical representation, the other on the basis of population.

If the city man is complaining now, what about the rural man? When both houses have been completely dominated by the influence of metropolitan interests, and the rural groups will have nothing to say. What will the situation be then?

Mr. PROXMIRE. Wisconsin has had this system for many years. There has been no domination by labor leaders or domination by urban areas over city areas. We have had rural representation that has been strong, and continues to be strong. In principle, it seems to me, that there is no basis for giving one person more representation than any other person. But that is what is being done in many places. Why give labor, or farmers, or urban persons, or rich persons more representation? There is no fundamental basis in principle for saying that we must protect some people because they should have protection against others.

Mr. LAUSCHE. The fathers of the Constitution did not think so.

Mr. PROXMIRE. Oh, yes; they did.

Mr. LAUSCHE. I understand the argument that is made. There is no analogy between what is being done in the States and what is being done in the Federal Government. Consider a large State, like California. I do not know its exact population; perhaps it is 15 million. California has two votes in the U.S. Senate. Many other States, having much smaller population, also have two votes. It was intended that there should be equal influence in the Senate.

Mr. PROXMIRE. Any study of the Federalist Papers, and any study of the writings of Jefferson, will show how deeply those men felt about the one-man, one-vote principle. The reason they did provide for the Senate on a different basis was that there was a confederacy before 1787, and a very weak government. It was necessary to bring the States together on some basis. That was accomplished by compromise, which necessarily was imperfect.

Mr. LAUSCHE. The Founding Fathers said, in effect, that some States refused to join the Union unless they have equal representation in the Senate. Those who were seeking to form a union decided that in order to bring those States in, all States would have two votes in the Senate; but that in the House the number of votes should be proportionate to the population of the States.

Mr. PROXMIRE. I understand that; but it should be recognized that the States had a real element of sovereignty, which they still have. It is an important element of sovereignty and an important part of our Federal system. The genius of our system is that we have federalism. We vest great power in the States. By the 10th amendment, the States received a reservoir of power, and still have it.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. PASTORE. Are we not missing the point completely? We are debating the question as though this were a constitutional convention. That is not the point. The point is that the Supreme Court, which is one of the three coordinate branches of our Government, has said that unless one man is given one vote, the Constitution of the United States will be violated under our republican form of government. The only way that condition can be changed is by amending the Constitution.

If it is desired to carry out the idea that within a State there is authority to have one branch represent the people and the other branch represent the State geographically constituted, that would have to be done under the terms of the Constitution itself. Therefore, the only way that could come about would be through a constitutional amendment.

As a practical matter, the serious problem that faces us is that the Supreme Court has spoken. I do not believe that Congress ought to say, by legislative fiat, that what the Supreme Court has said is unconstitutional, and that we declare the present practice to be constitutional for a certain period of time. If we did that, we would reach a ridiculous conclusion.

Mr. PROXMIRE. What the Senator has said is absolutely correct. What is extremely important, more important, even, than the reapportionment battle, is our relationship with the Supreme Court. We would be telling the Supreme Court that for more than a year it must not protect what they regard to be the basic rights of citizenship—the right to vote and the right to an equal vote.

Mr. PASTORE. That is correct.

Mr. PROXMIRE. We would be telling the Supreme Court that it must not protect that right. That would be extraordinary; it would be a bad precedent.

Mr. PASTORE. The only argument against it is that what we are trying to preserve for a short period of time, and for practical purposes, is something that we have lived with for a long period of time, until the Court rendered this decision. The argument has no legal value; I will admit that. But if it has not, how do we approach the problem?

We realize that we have a problem. I do not think any of us should take the position that we will tell the Supreme Court it has no right to declare something unconstitutional, and that if it does, we have the right to say that for a certain period of time it shall be constitutional. To take that position would be undemocratic.

How do we resolve this important issue in a sensible way, without impinging upon the constitutional prerogatives of the Court, and at the same time give

our citizenry an opportunity, in an orderly fashion, to conduct a sensible election on November 3? That is the question.

We can argue at length about what the Founding Fathers meant, but we shall get nowhere. The Supreme Court has spoken. Congress has no right to impinge upon the rights of the Supreme Court to say what is unconstitutional. Once the Court has said it, Congress has no right to say, "No. That edict under the Constitution shall not take effect for a period of 2 years, or 4 years, because it is impractical to carry out the American ideal."

Mr. PROXMIRE. That is correct; but I think it perfectly proper for those of us who feel strongly about it and also for those who disagree with us to discuss the fundamental principle at stake.

Mr. PASTORE. Yes; but the practical matter is that the Democratic National Convention is soon to be held. I am sorry the amendment has been proposed to the foreign aid bill; I do not believe it has any place in it.

The Senator from Ohio has raised his State's problem; and Wisconsin also has a problem. However, no hearings have been held; we have not heard from the Governors of the States; we do not know what the problems in each State are. Yet by means of this amendment we would be attempting to tell the country what should be done, without knowing the problem in each of the 50 States.

I believe the amendment should be brought forward as a separate bill; I do not believe it should be added to this bill.

Certainly we are confronted with a pressing problem. We should get busy about it. We should hold hearings on it, and we should quickly do something about it, before this session of Congress ends and before election day.

Mr. PROXMIRE. The Senator from Rhode Island is quite correct.

Mr. PASTORE. But I am afraid that by this means we shall not obtain the real answer; and then the Supreme Court will say, "This measure is unconstitutional." Then, after all the effort, day in and day out, we would end with nothing. That is what concerns me.

I hope we shall get to work on this problem, and shall hammer out a measure which will make sense. I do not believe it does much good to discuss the history of this matter.

Certainly this is a very serious constitutional problem, a legal problem, and a practical problem; and in the final analysis we must resolve the problem.

Mr. PROXMIRE. I believe all Senators will agree with me—although for different reasons—when I say we would like to end this debate now, and would like to pass the foreign aid bill now. But it would be terrible to pass the foreign aid bill with this rider on it, in view of the effect the rider would have on Wisconsin. Therefore, I believe I have a right to protest at length.

Mr. PASTORE. Certainly; I agree.

Mr. PROXMIRE. I believe that in doing so, I should discuss the fundamental reasons—on the basis of principle, on the basis of history, and so forth.

One of the reasons for opposing the addition of this provision to the foreign aid bill is that the amendment would deprive the President of his constitutional veto power, insofar as this provision is concerned. Everyone knows that the President would not veto the foreign aid bill. Certainly he should have a right to exercise his judgment on this particular matter, and should have an opportunity to veto the provision, on its merits, if he thought that best.

Mr. PASTORE. That is correct.

At this time, I do not know what the modified amendment would do to Rhode Island. I realize that the two leaders have discussed the matter carefully, and have tried to work out a provision which would make sense. But they do not know the situation in Rhode Island. No Member of the Senate has asked me or the Governor of Rhode Island or the Rhode Island Board of Elections or the Rhode Island Secretary of State. So I say frankly that I do not know whether this amendment would work in Rhode Island.

However, the unfortunate thing is that by means of the amendment, Congress would be telling each State how it should operate on the basis of what would satisfy the situation in the States of the sponsors of the amendment. That is what is wrong with the amendment.

Mr. PROXMIRE. That is another reason why I believe we should examine the effect of the amendment on each of the 50 States.

Mr. AIKEN. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. AIKEN. I have been much interested in the statement the Senator from Rhode Island has made. I realize that he does not know how the Supreme Court's decision would affect his State, because there has not been a specific case affecting his State.

However, there has been a case affecting Vermont; and the Federal Court has ordered that the Vermont Legislature—which will meet in January 1965—do absolutely nothing except to reapportion the State. After the State has been reapportioned, there would have to be new elections, before the legislature could meet again for the transaction of State business. In the meantime, the terms of the appointive officers of the State—except the terms of those who have 6-year terms—would expire, mostly on February 1. The terms of all the municipal judges and the terms of all the State judges would expire before the legislature could possibly complete its work on reapportionment and before new elections could be held. That would mean that during that period of time a state of chaos would exist in Vermont government. There would be no means of law enforcement, because no judge would be legally authorized to hear cases after the expiration of his term of office.

I agree that the amendment would be better considered by itself, as a separate bill. However, there is no chance to do so in time to avoid the chaos which the Court order would create.

I should like to vote for a foreign aid bill now; but I would prefer to have no foreign aid bill at all than to create chaos and anarchy in the United States, because this country means more to me than any other country does, and the maintenance of a genuinely democratic form of government in our country means more to me than the establishment of democracy in other countries.

I am not so much concerned with the decision of the Supreme Court itself as I am to the assumption and exercise by the Court and of the lower Federal courts of powers which, so far as I know, can be delegated to such courts only in such manner and in such measure as Congress may determine. In my opinion, there is a serious question as to whether, instead of interpreting the Constitution, the Court has not just thrown it out the window in part, at least.

However, if we can handle this matter in an orderly manner, so as to prevent confusion in the United States, that is what we should do. After all, anarchy and disdain for law and order is now creeping into our cities. Violence and crime there are on a sharp increase. I notice that in the Metropolitan New York area many special policemen are being appointed to duty for this weekend. Yet those are the areas in which the entire responsibility for the Government of the United States would be concentrated should the philosophy of the Federal courts be carried to its logical conclusion. We should keep away from such a thing. Government to be healthy and just must be in fact fully controlled by the people.

If the Court's order were carried out as it could be, the probable result would be to disfranchise possibly as much as 25 percent of the people of the United States, insofar as representation in their own legislative bodies is concerned.

So, Mr. President, let us take the necessary time to do this work correctly and decently.

I concede that probably one or both houses of the legislatures of perhaps three-fourths of the States are malapportioned. This is the inevitable result of shifting populations. But I do not believe that both houses of our bicameral legislatures should be based on population alone.

It is of vital importance that not only should each qualified person be guaranteed the right to vote but should be guaranteed the right of legislative representation as well.

I wonder whether the Senator from Wisconsin knows of any major country in the world in which both houses of a bicameral legislature or parliament are based on the same criterion. I realize that some small countries—for example, Costa Rica, Israel, and Panama—have unicameral legislative bodies.

Mr. PROXMIRE. Our Presidential system is not a common one. The parliamentary system is more common. Great Britain still has some rotten boroughs; however, Britain is correcting that situation, and at least has the principle of a one-man, one-vote system, although with some defects. I suppose it is true that the British system is no longer de facto bicameral, even though

it is de jure bicameral; after all, the British House of Lords has no real power.

However, the fact is that our system is unique and different.

Mr. AIKEN. But what is the use of having a bicameral legislature if both houses are to be elected on exactly the same basis?

Mr. PROXMIRE. Because the system works well. It has worked well in Wisconsin. The senate does serve to give more mature and more careful consideration. The members of the senate have staggered terms. In Wisconsin, most of the members of the senate tend to be somewhat older, and perhaps serve longer, and have more mature judgment.

So there are some significant differences. Certainly, insofar as prudence is concerned, it is found in a bicameral body.

Mr. AIKEN. But the fact is that the Court's order will throw many of the State governments into confusion.

I would say Wisconsin would constitute a special circumstance. If its reapportionment has been satisfactory to both parties and to the people of the State, I know of no reason why the incoming legislature would not approve it. However, that is a matter for Wisconsin to decide, and I should not discuss it.

Instead, I speak of my own State.

Mr. PROXMIRE. Let me reply to the point the Senator from Vermont previously made by saying that I have before me a study made in 1962 by the Twentieth Century Fund. I shall read the first two sentences. They read:

In many countries with a long tradition of representative government, legislative apportionment is no longer a political issue. In Great Britain and some Commonwealth nations, for example, there is general agreement that parliamentary districts should contain approximately equal populations, and redistricting is accomplished regularly and on a nonpartisan basis. But in the United States, apportionment remains a vexing problem.

Mr. AIKEN. The appropriating authority, however, is also taken out of the hands of the people in some of those countries.

Mr. PROXMIRE. I do not argue that any other country is superior to our country. But I say that in this particular respect, some nations have adopted the principle of one man one vote. It has worked well. It has worked well in my State. I believe it would work well in the Nation.

I believe the analogy of the Federal Government and the 50 States is entirely different. The Federal system is extremely important. It delegates the residual power to the States. That is very important. But the Nation is really the creature of the States. It was created by the States. It is the very principle behind it. The State creates its own political bodies within its boundaries. It can expand or contract its cities, towns, villages, or counties. They are all creatures of the State. In any Federal system, this would have to be artificial.

We come down to a basic argument as to whether we believe every man in America, whether rich, poor, farmer, or city dweller, should have an equal vote.

Mr. AIKEN. And also representation, as well as vote.

Mr. PROXMIRE. It seems to me that the Supreme Court's position can be supported.

Mr. AIKEN. We can have an equal vote for every person in the country, and still effectively disfranchise a fourth of the people, because they have no power of representation.

Mr. PROXMIRE. Certainly. And by my amendment we would help to solve this problem. It would make the Dirksen amendment operate in the exceptional circumstances that exist, perhaps, in Oklahoma and some other States. It would be put in effect for a period of time, perhaps a year, but under most circumstances, the door would be open. The Supreme Court would proceed as it has been proceeding—toward a one-man-one-vote principle in both houses.

Mr. AIKEN. What is wrong with giving the States a year? The Dirksen-Mansfield amendment, as I understand it, would give the incoming legislature of my State the power to perform necessary business to carry the State through on the usual basis, until reapportionment could be effected, probably later in the spring. But they have been told that they must have everything done by the 15th of March. That would be an impossibility without violating our own State constitution and statutes.

Mr. PROXMIRE. If my amendment were agreed to, it would mean that the courts would proceed with a little more gradual approach. We must recognize, however, that there will always be a clash. The legislatures will resist, for the most apparent, transparent reasons. The Senator and I know people in our own States whose jobs are at stake. They have been in the legislature for many years, and the only way to have it reapportioned is often to place two people in the same party from the same district up for election. That would be a painful thing to do. The people will fight it. They will oppose it. It will take a long time. But they will use this time to try to pass a constitutional amendment which would destroy any possibility of one man one vote at any time in this country.

Mr. AIKEN. I do not agree with that, as to the two houses of the legislature.

Mr. PROXMIRE. Once the amendment is written into the Constitution, it will not be removed.

Mr. AIKEN. I believe that every man, regardless of his status, should have representation and a voice in his legislative body. We could have an equal vote for each person, one vote for one person, and still effectively destroy his franchise.

Mr. PROXMIRE. Mr. President, I yield to the Senator from Illinois.

Mr. DOUGLAS. Mr. President, I wish to bring out precisely what the Supreme Court said with regard to the equality of representation.

It is sometimes said that the Supreme Court requires precise, arithmetical equality. I read from page 2 of the opinion in the Reynolds against Sims case, the Alabama case. It is a passage from the majority opinion:

By holding that as a Federal constitutional requisite both houses of a State legislature must be apportioned on a population basis, we mean that the equal protection clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement.

In other words, the court is saying that there should be approximate equality, with variations.

Mr. PROXMIRE. Yes, indeed.

Mr. DOUGLAS. I believe this is an important matter to clear up. Charges have been made that it is impossible to place the districts on a precise population equality basis.

Mr. PROXMIRE. I believe that is very important. The Court has been thoughtful, careful, and prudent. It is true that in some cases there seems to be haste, which creates difficulty. But we shall always encounter that kind of situation.

I wish to make one further point. The Senator from Vermont has stressed, as has the Senator from Illinois, that if we do not pass this measure, there will be chaos. If we do pass it, there will be much worse chaos. One reason for that is that there is no doubt in anybody's mind that the Supreme Court may not accept this provision. Federal judge after Federal judge will have to guess whether the Supreme Court will accept a law which may be ruled as unconstitutional. In the meanwhile, before they can act, there will be real chaos everywhere in the country. We now have a situation that is gradually becoming more and more settled. If my amendment should be agreed to, there would be an opportunity in exceptional cases involving difficulty, for the Court to provide a stay for a full year, or more.

Mr. AIKEN. Mr. President, it was not the Supreme Court that gave the order to the State of Vermont. It was a lower Federal court. In Vermont, it was held that the State senate was controlled by 47 percent of the people. There are only two or three States in the Union, as I recall, in which the senate is more nearly representative.

Mr. DOUGLAS. What about the lower house in Vermont?

Mr. AIKEN. The lower house has one vote for each town.

Mr. DOUGLAS. In what proportion?

Mr. AIKEN. Vermont and Connecticut have had approximately the same method of representation in both houses for approximately 125 years. The lower house has one representative for each town or city, while the senate is based on population. The States of Vermont and Connecticut have been better operated over the period of our statehood than any other two States in the Union. We yield to none in this respect.

Mr. DOUGLAS. The smallest district in Vermont has 36 people, and they elect

one legislator in the lower house. The largest district has 35,531. It elects one member of the lower house.

Mr. AIKEN. Exactly.

Mr. DOUGLAS. Just a moment.

In Vermont, one person in a small hamlet has as much voice as 1,000 people in the larger town.

Mr. AIKEN. Exactly.

Mr. DOUGLAS. And the fine Senator from Vermont has the extraordinary temerity to stand here and justify that.

Mr. AIKEN. I point out that the largest hamlet in Vermont has 20 percent of the membership of the State senate. The small hamlet to which the Senator refers has never had a State senator to my knowledge.

Mr. DOUGLAS. The State legislature can be controlled if one house of the legislature is controlled.

Mr. AIKEN. I am not defending the house of representatives of Vermont against any charge that it is malaportioned, because it is.

Mr. DOUGLAS. It started in 1793 and has never been changed.

Mr. AIKEN. We are handicapped by a 10-year time lock on the State constitution, which ought to be changed. The time lock became passé probably two generations ago. We have need for reform, but for Heaven's sake, give us an opportunity to do it properly. Do not say that we must do the impossible.

Mr. DOUGLAS. The Senator's State has had an opportunity since 1793. The constitution of Vermont took effect in 1793. It granted equality of representation to each town. The State has had 171 years to do something about it. How much more time does the Senator desire?

Mr. AIKEN. We should have at least 6 months after January 1, 1965. I point out——

Mr. PROXMIRE. I shall yield to the Senator from Vermont in a moment.

Mr. AIKEN. I wish to make one brief statement.

Mr. PROXMIRE. I yield.

Mr. AIKEN. Vermont has been a good State. It has been far more progressive than most States. It had a unicameral legislature for 40 or 50 years, and then that was abandoned because it did not work too well.

I know that the Senator from Wisconsin must be an admirer of Thomas Jefferson. I point out that a Vermont delegate in 1803 cast the vote which nominated Thomas Jefferson on the 38th or 39th ballot, I believe.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. PROXMIRE. Before the Senator from Illinois replies, I wish to say to the Senator from Vermont that I am delighted that he brought into the debate Thomas Jefferson, because Thomas Jefferson spoke on the issue again and again. Every time he spoke he said that he was for the principle of one man, one vote. He was for the principle of equal representation. He said that it was a cardinal tenet of democracy. He pointed out how people are deprived of effective enfranchisement in the absence of such a system.

Mr. AIKEN. Thomas Jefferson was not giving the Supreme Court superiority over the legislative branch of the Government.

Mr. PROXMIRE. He recognized, as every student must recognize, that the Supreme Court is in many respects, if not in most respects, the weakest branch of the Federal Government. Hamilton spelled it out clearly in the "Federalist Papers." He said that the Supreme Court is, by far, the weakest of the three branches of the Government for it has no purse, as does the Congress, and no sword as does the executive. Again and again, from Andrew Jackson's time, the Supreme Court has had to give in to the superior powers of the legislative branch or the executive branch. I shall develop that point at some length later.

Mr. AIKEN. Once more I point out that we do not pretend to be perfect, even if we have at times laid claim to being the nearest to perfection of any of the States. We do not pretend to be perfect. But we are not miracle workers and we do need time to do the required job of reapportionment. The Dirksen-Mansfield amendment would give us that time.

Mr. President, I would rather vote to kill the foreign aid bill completely than to take any steps which would lead to the ultimate destruction of our democratic form of government, whereby each person has the right to representation in State and Federal legislative bodies.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. DOUGLAS. I do not wish to poach on the time of the Senator from Wisconsin, but since my good friend from Vermont has introduced the name of Thomas Jefferson, I should like to say that I hold in my hands his famous work entitled "Notes on the State of Virginia," the Harvard edition. On page 112 of that edition Jefferson speaks of the representation in the Virginia Legislature, which, as I mentioned yesterday, overrepresented the tidal counties and underrepresented the back country, and he criticized it. He said:

> This has been a capital defect which has been discovered in the Constitution of Virginia.

Jefferson argued in favor of the equality of representation on the basis of population in both Houses of the legislature. I am glad that Vermont was pro-Jefferson.

Mr. AIKEN. We were.

Mr. DOUGLAS. I am sorry that Vermont has departed from the tenets of Jefferson, largely because of the Civil War.

Mr. AIKEN. Mr. President, will the Senator yield?

Mr. PROXMIRE. Before the Senator from Vermont replies to the Senator from Illinois, I should like to underline what the Senator from Illinois has said. Jefferson protested a malapportionment in Virginia in which the low was 951 constituents and the high was 22,000. That was a ratio of about 20 to 1, or a little worse than 20 to 1. How does that ratio compare with Vermont?

Mr. DOUGLAS. In Vermont the ratio is 1,000 to 1. Thirty-six thousand people elect one member of the Vermont Legislature.

Mr. PROXMIRE. How would Thomas Jefferson feel about the Vermont situation today.?

Mr. DOUGLAS. I believe he would feel that Vermont had fallen away from its early faith.

Mr. AIKEN. Now that the subject has been brought up, I should like to point out once more that when the Constitutional Convention met in 1789, the States of Virginia, Pennsylvania, Massachusetts, and New York insisted that representation in the Continental Congress should be based upon population alone, although some of the delegates thought that wealth should also carry weight. If these delegates had had their way, there would have been no United States of America. Fortunately, because of Delaware, New Jersey, and other less populated States, the wealthy-populous States did not get their way. We got a good Constitution. The United States became a great nation and that is the way we intend to keep it.

Mr. PROXMIRE. Mr. President, the principle has been brought up today. I do not know how we can get away from it. It must be discussed. Though it may not be articulated frequently on the floor, there is no question that there is an underlying feeling on the part of some Senators that a one-man one-vote rule is a basic, important, and central tenet of democracy. Others believe it is not. After all, if we do not believe in one person one vote, what other principle is there? If we are to dilute that principle, it means that one person must have more influence than another. I do not know how we could reason in any other way. The progress of democracy, from monarchies to the present day, has been to overcome the distinctions and the privileges in some cases involving, giving votes only to property owners, in some cases only to whites. And this is a battle we are continuing to fight with the civil rights bill. Up to 1919, when the country voted on the question of woman suffrage, franchise was given only to males, we have been gradually and slowly overcoming the dilution of democracy which has prevented people from being properly represented.

Now, as the Senator from Illinois in a brilliant statement last night documented in the greatest detail, we have a situation which is worse than it was 100 years ago. It is worse than it was 50 years ago. It is a situation which, as he said, results in some persons having 1,000 times the representation that other persons have.

Mr. President, property is a bad and invidious basis for enfranchisement. But at least there is the logic, however thin, based upon the tax burden which property carries, or the financial responsibility which comes as a result of the ownership of property. Property is a type of capital investment. It might be argued that since a man who owns property will have to pay more taxes than his neighbor who does not own similar property,

therefore he should have a greater vote. The logical basis exists although I oppose it. But there is no logical justification for the kind of county apportionment which was discussed so tellingly by the Senator from Illinois [Mr. DOUGLAS] last night, which resulted in serious disfranchisement in State after State.

Furthermore, as will be spelled out by other Senators in the debate, the existing malapportionment has a practical effect, because in State after State the legislature cannot do the job which it should for the suburban groups. For the urban groups the legislatures cannot solve problems related to slum clearance, education, and others. What happens? The cities must come to the Federal Government for assistance.

Mr. CLARK. Mr. President, will the Senator yield at that point?

Mr. PROXMIRE. I yield to the Senator from Pennsylvania.

Mr. CLARK. I commend the Senator from Wisconsin for the fine speech he is making. I have read with interest the amendment which he proposes. I personally believe that if we become desperate enough, his splendid amendment would help very much the "robber baron" Dirksen "rotten borough" amendment, which I believe to be bad in its entirety.

The Senator will, of course, be the judge of his own procedure. But, having made his case and having made it as well as he is presently doing, I would hope that he would give some thought to the desirability, for the time being, of withdrawing the amendment until some of the rest of us have had an opportunity to develop our cases and suggest certain other alternatives. It might well be that some time next week an initial motion to table will be made. Then the Senator could come back with the amendment at a later date, rather than putting it up to hazardous chance so early in the debate on the question, which to my way of thinking is one of the most important questions which has come before the Senate in many a long day. I merely offer the suggestion. If my friend does not think it is wise to take it, of course, I shall abide by his conclusion.

Mr. PROXMIRE. I thank the Senator. I shall seriously consider his suggestion.

Mr. President, it has been argued that if we do not act on the Dirksen amendment, we are going to have chaos in the States and great difficulties in the coming elections to the State legislatures. I would like to argue that if we do act favorably on it we are going to have far more serious chaos; and, as a matter of fact, bad as the situation is at the present time, because the Supreme Court has acted firmly and clearly, we are making progress toward a settled, orderly situation.

I think the State that has probably been referred to by more Senators than any other is Oklahoma, which has a very tough and serious problem. I noticed that the Washington Post today, in a dispatch from Oklahoma City, headed "To Prevent Chaos," reports that—

Gov. Henry Bellmon, saying he must act to prevent chaos, proclaimed a special primary for September 29 to elect a new legislature in compliance with a Federal court reapportionment order.

There will be no runoff. The filing period will run 5 days, beginning August 31. Bellmon also called a special general election for November 3 to complete the legislative elections.

The court declared last Friday that the State's entire legislature is vacant as of November 18. Under Oklahoma law, the Governor must call for elections to fill vacancies.

There may be a difficult situation in Oklahoma. As I pointed out before, my amendment would give the people there an escape valve. However, bad as the situation may be—Oklahoma is attempting to solve its problems.

If the Dirksen amendment were adopted, there would be a very difficult situation in every one of the 50 States, including Oklahoma and including States like Wisconsin, that have reapportioned. So the Dirksen amendment would negate the progress that has been made, and create a situation which would be particularly bad.

What are the courts going to do? Some courts are going to hold that the Dirksen amendment is constitutional and must be complied with. I am convinced that many courts will seriously doubt that it is constitutional for the Congress to say that the Supreme Court shall not protect what we must consider a fundamental American right—the right to equal representation.

If the courts do not consider this amendment to be proper—in some cases they will and in some cases they will not—we shall really have chaos and a difficult situation. I cannot see any alternative.

Fred Mohn, of United Press International, in the Washington Post of last Sunday, wrote a fine article analyzing the progress the States are making in inching along toward the one-man-one-vote rule. I read from that article:

The U.S. Supreme Court decision 2 months ago ordering "one person, one vote" legislative reapportionment has some States in legal and political turmoil.

Others complied quietly and still others ignored the ruling.

The Court's ruling that both houses of State legislatures must be reapportioned on the basis of population was a potentially heavy blow to the farm and "cow country" minorities that traditionally dominate some houses.

The biggest impact would be in the States with the larger cities and spreading suburbs that are now underrepresented, on the basis of population.

A United Press International survey of the States showed that most were in the process of carrying out the Court's ruling.

Let me repeat that:

A United Press International survey of the States showed that most were in the process of carrying out the Court's ruling.

Of course, the Dirksen amendment would stop that.

I continue to read:

But the change, if it comes, still was years away. The long process of amending State constitutions, plus the process of reapportionment itself, meant that legislatures made up according to the Court's guidelines couldn't convene until 1969 in such States as Illinois and Massachusetts.

The Supreme Court decision of June 15 applied specifically to only six States—New York, Delaware, Maryland, Virginia, Alabama, and Colorado. But almost all States are affected. The ruling would outlaw such disparities as the Georgia house, where Fulton County's (Atlanta) 556,326 residents have 3 representatives, and Echols County, with 1,876 inhabitants, has one—a representation difference of almost 100 to 1.

It would affect such legislative decisions as who gets California's limited water resources and how much of the pork barrel goes to Hawaii's neighboring islands.

And it could mean the end of the line for some powerful figures in State political circles if their districts were expanded to include other incumbents.

How important that element is. We are all human. All of us have friends in State legislatures. We know how the proposal affects them. Most of them have given much of their lives to the service of their States. We know how reapportionment may end their careers. So it is human not to want to do anything that will affect them.

If we do not permit the Supreme Court to act now, we are never going to have an opportunity to have what Thomas Jefferson and others regarded as the basic tenet of democracy—equal representation and equal votes.

Mr. Mohn continues:

Congress has before it legislation that would require one legislative house to be based on population but would allow each State to decide for itself the basis for the other house's district boundaries.

Minnesota Gov. Karl Rolvaag, in appointing a citizens committee to devise a reapportionment plan, said the task was "enormously complicated and fraught with controversy."

The Supreme Court apparently was aware of the complications involved. It gave no specific instructions on how its ruling should be carried out, and Chief Justice Earl Warren said each State system should be judged on a case-by-case basis.

What is wrong with that?

I continue:

"What is marginally permissible in one State may be unsatisfactory in another," Warren said.

The dispute had no effect in Oregon, which reapportioned both houses on the basis of population in 1961 and consequently operates with area rather than population imbalances.

However, I understand that the Dirksen amendment may upset conditions in Oregon, too. I talked with some Oregon people this morning. This article was not written at the time the modified amendment which the minority leader has now placed before the Senate was introduced.

I continue to read:

While 8 of the State's 30 senators live within the Portland city limits, Senator Anthony Yturri represents a four-county area of nearly 28,000 square miles—a district as big as Vermont, New Hampshire, Rhode Island, and New Jersey combined.

And so forth.

Reapportionment may come to Vermont next year.

We have been discussing this matter with the distinguished Senator from Vermont.

The 1965 Vermont Legislature is under court orders to reapportion and then disband without acting on any other legislation.

In New York, Gov. Nelson A. Rockefeller named a special committee headed by Dean William H. Mulligan of the Fordham Law School to make reapportionment recommendations to him by December, when he was expected to call a special legislative session.

A three-judge Federal court last month gave New York until April 1 to pass a legislative reapportionment law based on the Supreme Court ruling.

There is a great deal more than I could read, but the fact is that after careful study and analysis by the United Press International and after direct inquiry by the press the survey details the progress being made in carrying out the Court's ruling.

In other words Congress, by this amendment, would be interferring with the Supreme Court order, which is being complied with, which is progressing, with great difficulty but progressing—it will always be with great difficulty—and is gradually, slowly, and definitely being met.

Mr. President, one of the most remarkable studies that has been made on intergovernmental relations was made by the Advisory Commission on Intergovernmental Relations on October 10, 1962. This was a study of apportionment of State legislatures made by a very distinguished panel, including several Senators. I should like to read the names of some of the outstanding members of the panel. It was a bipartisan group of outstanding men, including John Anderson, Jr., Governor of Kansas; Richard Y. Batterton, mayor, Denver, Colo.; Neal S. Blaisdel, mayor, Honolulu, Hawaii; Howard R. Bowen, citizen member, Grinnell, Iowa; Anthony J. Celebrezze; Secretary of Health, Education, and Welfare; Edward Connor, supervisor, Wayne County, Mich.; C. Douglas Dillion, Secretary of the Treasury; Michael V. DiSalle, then Governor of Ohio; Robert B. Duncan, speaker, house of representatives, Salem, Oreg.; Florence P. Dwyer, Mrs., Member of the House of Representatives; Sam J. Ervin, Jr., Member of the Senate; L. H. Fountain, Member of the House of Representatives; Ernest F. Hollings, Governor of South Carolina; Eugene J. Keogh, Member of the House of Representatives; Karl E. Mundt, Member of the Senate; Edmund S. Muskie, Member of the Senate; Arthur Naftalin, mayor, Minneapolis, Minn.; Graham S. Newell, member of the State senate, Montpelier, Vt.; John E. Powers, president, State senate, Boston, Mass.; Robert E. Smylie, Governor of Idaho; Raymond R. Tucker, mayor, St. Louis, Mo.; Robert C. Weaver, Administrator, Housing and Home Finance Agency; Barbara A. Wilcox, commissioner, Washington County, Oreg.

That is about as distinguished a group of people, representing various levels of government in our country, as it is possible to assemble. This group came to a very interesting conclusion. I shall discuss this study at some length a little later, because I think it is a most remarkable analysis by outstandingly competent people. There were some dissents. The dissenters included some distinguished Members of this body. However, the majority of this distinguished panel of Federal, State, and local representatives came to this conclusion:

Equal protection of the law would seem to presume, and considerations of political equity demand, that the apportionment of both houses in the State legislature be based strictly on population.

Let me repeat that, Mr. President. This distinguished group of people, after careful study and a comprehensive analysis of the history of the law and political realities, came to the conclusion:

Equal protection of the law would seem to presume, and considerations of political equity demand, that the apportionment of both houses in the State legislature be based strictly on population.

Governor Smylie, joined by Governor Anderson, Governor Hollings, and several others, would have preferred to have the Commission adopt the following statement of principle:

Equal protection of the law would presume, and political equity demand, that the apportionment of both houses in the State legislature be based strictly on population, unless the people directly demand otherwise.

This issue was argued, and the majority decided that even if the people did determine otherwise, nevertheless both houses should be based on population.

There was a clear dissent by Senator ERVIN of North Carolina, who said that he thought both houses should be based on population. There was a very interesting and thoughtful dissent by the distinguished Senator from Maine [Mr. MUSKIE], joined by the distinguished Senator from South Dakota [Mr. MUNDT]. However, both of these Senators indicated very strong support for the principle, although with some concern as to how the principle should be carried out.

Because these gentlemen discussed the situation at such length, and considered it so thoughtfully, the Senate should have the benefit of their views also.

After listening to the distinguished Senator from Illinois last night say that State legislatures have been badly malapportioned, I intend to show as conclusively as I can the ill effects which malapportionment has had on our system of government.

I should like to quote now from an excellent work entitled "The State Legislature—Politics and Practice," written by Malcolm E. Jewell, of the University of Kentucky. Speaking of divided government, he stated:

The other major cause of divided government is the system of representation. Most familiar is a constitutional formula for apportioning at least one legislative branch that discriminates against urban areas. In States like Connecticut, Rhode Island, New Jersey, and Michigan, this has usually prevented Democratic Governors from having complete legislative majorities, while in Maryland it has worked to the disadvantage of a Republican Governor. In both New York and Massachusetts the Democrats have been handicapped by two other factors. Republican legislatures have gerrymandered the legislative districts, designing them so as to help Republican candidates. In both those States, and some others, the Democratic vote has been so heavily concentrated in metropolitan areas and so thinly spread throughout the rest of the State that, under the single-member district system, it has been difficult to gain Democratic majorities in the legislature.

According to all the studies I have seen, the cities have not been gaining in population. The people have been moving to the suburbs. They move to the suburbs because the suburbs are attractive places, but they are places where larger incomes are required than in cities or in rural areas. So the people who have been underrepresented, in the suburbs, are people with higher incomes, who are inclined to be conservative and Republican.

This is not an ideological argument or a partisan argument. It is an argument for equal justice.

I continue reading:

Illinois, Ohio, and New Jersey are other good examples of States where this has been true. In New York, where Democratic Governors have normally had to contend with Republican legislatures, the disparity appears to result primarily from gerrymandering and the drawing of unequal districts, as well as the heavy concentration of Democratic voters in a few metropolitan areas. In some States the underrepresentation of Republican suburbs may tend to offset the underrepresentation of Democratic cities. There has been evidence of such a trend in States like Illinois, New York, and Pennsylvania.

There are several States, and the number is likely to increase, where the apportionment system works to the disadvantage of the Republican Party. In some traditionally Democratic States where there is relatively little Republican strength in rural areas, the Republicans are dependent on growing strength in the urban and suburban areas to overcome their minority status. In such cases malapportionment helps to maintain Democratic dominance of the legislature. An example is Maryland, where Theodore McKeldin served as Republican Governor from 1951 through 1958 with a Democratic legislature; in the lower house the Republicans had only 20 to 30 percent of the members. Organizational factors were one cause, but the underrepresentation of suburban areas hurt the Republicans also. At present Baltimore City is slightly underrepresented in the house; it usually elects a full slate of Democrats. The three largest suburban counties (outside Baltimore and Washington) have 250,000 more people than Baltimore but together elect half as many representatives in each branch; two of these three counties elected predominantly Republicans at the height of Republican strength under McKeldin.

So, Mr. President, the bad effects of malapportionment are not only in the inability of the States to solve the problems that concern the urban and suburban population—the growing population, which is likely to create more problems—but also because malapportionment results in one house being represented by one party, having one viewpoint, one attitude, while the other house is represented by another party, having different views; or in some cases both houses being represented by one party, while the Governor is of another party.

However, most people, no matter how much they believe in independence and

checks and balances, recognize that we can go too far. They recognize that we can go too far when this situation continues year after year, and neither party can be responsible; neither party can put a program into effect; neither party can be responsive to the people who elect them.

There is no question that malapportionment is very likely to perpetuate that situation. As Mr. Jewell says:

> The apportionment system may act as a deterrent to a minority party, discouraging it from contesting some of the legislative seats aggressively. It is most important politically when it produces divided government. If a Governor cannot command a legislative majority, and particularly if the apportionment system makes it unlikely that he will in the future, he is forced to bargain with the opposition party to enact his program. The result may be a stalemate, as in Michigan where the Democratic Governor and Republican legislature could not agree on the form of additional taxes.

How well all of us recall the situation in Michigan. Michigan had a wonderful Governor. He was one of the finest and ablest administrators of our time. Mennen Williams is an able, brilliant man. He won more popular support in Michigan than any other Governor of that State ever had. He was elected not once, not twice, but six times. He was the dean of Governors in America. He was a man who had clear, incisive ideas about the kind of program he wanted.

But unfortunately, in most of the years that Governor Williams was in office, there was a divided legislature. It was a predominantly Republican legislature, which disagreed with the Governor. The Republican program may have been just as good for Michigan as the Democratic program; but because one branch of the government was Republican and the Governor was a Democrat, it was extremely difficult for Governor Williams or the legislature to enact a program. There was a stalemate, and the result is well known throughout the country.

In my State of Wisconsin, we were frequently told by our Republican opponents about the Williams administration. We admired Williams; we liked him. We knew how able and efficient a man he was; what a fine administrator he was; what a good Governor he was; and the kind of popular support he had. But he was not able to do the job he wanted to do for the people of his State because he had a divided legislature.

Exactly the same situation could have arisen under a Republican Governor; and it does in many States. One reason for that is malrepresentation. There is malapportionment because there is a tendency, under those circumstances, for the majority of at least one house to be of one party, and a majority of the other house to be of the other party. I defy anyone, including the distinguished junior Senator from Iowa [Mr. MILLER], who is an expert in many of these areas and is also a good student of history, to give me any citation, anywhere, by any of our Founding Fathers or any of our political philosophers, which holds that it is good and healthy to have party responsibility divided; to have one branch of government dominated by one party, and the other branch by the other party; or by having both branches of the legislature controlled by one party, and the Governor representing the other party.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield to the Senator from Iowa.

Mr. MILLER. First, I assure the distinguished Senator from Wisconsin that I was not about to make a comment regarding divided legislatures particularly. I wished to comment on the Senator's somewhat exaggerated praise of a former Governor of Michigan. It seems to me that I recall numerous articles having been written about the deplorable state of the finances of the State of Michigan. Michigan went deeply into debt. It piled up a debt of hundreds of millions of dollars during the long tenure of that Governor of Michigan.

I grant that problems arise when there is a division in party responsibility between the legislature and the executive. Nevertheless, for the purpose of trying, at least, to practice some semblance of fiscal integrity, so far as the people of the State or concerned, I have observed that in most States this has been done. But the State of Michigan was a flagrant example of how it was not done.

Mr. PROXMIRE. The distinguished Senator from Iowa has made my point beautifully, far better than I have made it. He has emphasized it well. He has pointed out that in Michigan, a big State, a rich State, a State that had a popular Governor—no one can deny that; he was elected six times, which is an alltime record—there was, nevertheless, a serious financial crisis. I would not deny that. The State did go into debt. But that was because the Governor and the legislature could not agree or get together. They could not operate as a team. Why not?

It was because the Governor felt strongly and deeply about the principles of the Democratic Party, what it was founded on, where it should go, and the manner in which taxes should be raised. The Governor and the legislature foundered again and again on the question whether a sales tax or an income tax should be enacted. This disagreement continued for years. There was tragedy for the people of Michigan; there is no question about it. The Governor knew about it. Democrats and Republicans agreed that it was a tragedy. They could not resolve it. One reason was that Michigan had a badly malapportioned legislature. It was composed of people who had been elected from rural constituencies and areas, who were, predominantly, from a party different from that of the Governor. They disagreed with the Governor and would not permit him to put his program into effect. The Governor was in a position of having either to sacrifice the principles about which he felt very deeply or to fight for his principles—which is what he chose to do—and fight for a program that he thought was based on equity, justice, and fair taxation.

Mr. MILLER. Mr. President, will the Senator further yield?

Mr. PROXMIRE. I yield.

Mr. MILLER. The Senator from Iowa does not intend to reaffirm what the Senator from Wisconsin has said about the administration of that particular Governor of Michigan. What the Senator from Wisconsin just said, I believe, reaffirms what the Senator from Iowa said, namely, that that Governor felt so strongly and stubbornly about certain principles that, as a result, Michigan went hundreds of millions of dollars deeper into debt and became one of the classic examples of poor administration and unsound fiscal control.

I thought I ought to make this point so that the RECORD might show that there are two sides to the comment regarding the tenure of the former Governor of Michigan. I grant that he is a personable individual. I do not gainsay his sincerity. I do gainsay his administration having been a sound example of good administration.

I grant that he is a very personable individual, and I do not gainsay at all his sincerity. I do gainsay the effectiveness of his administration, in terms of good government. Certainly it was not a sound example of good administration. I am sure the Senator from Wisconsin, who is quite knowledgeable about such matters, well knows that if his own State of Wisconsin had gone into debt nearly as deeply as Michigan did, there would practically have been a revolution.

Today, I am pleased to say, the State of Michigan is proceeding, under a Republican administration, to go into the black for once, and it appears that it will continue to do so. In fact, a surplus has been built up.

So I could not remain silent when I heard high praise of the then Democratic Governor of Michigan, in view of the chaotic financial situation which was allowed to develop.

I served the legislature of my State when it had a Democratic Governor; and I grant that there were difficulties. In fact, difficulties now exist there, because Iowa now has a Democratic Governor and a Republican legislature. But regarless of their differences, they have been able to keep the State government in the black and out of the red.

So I believe this is a reflection on the sense of financial responsibility of both the executive branch and the legislative branch; and I regret very much, for the sake of the people of Michigan, that such a sense of responsibility did not exist during the term of that Governor.

Mr. PROXMIRE. This matter is not particularly relevant to the subject now before the Senate. However, I point out that the then Governor of Michigan is a brilliant man. He was an outstanding student in college and in law school, and at a remarkably early age he became a Governor.

The Senator from Iowa has spoken of the Governor's stubborness. I believe he knows how we evaluate character in our society on the basis of Aristotle's Nicomachean Ethics, applying the golden mean. After all, if a man is brave——

Mr. MILLER. Perhaps we should say extremely brave.

Mr. PROXMIRE. Very well. If a man is extremely brave he may be regarded by people who do not like him as foolhardy.

Governor Williams was committed to a principle of justice in taxation, it may be said that he was stubborn because he fought for it.

I believe Governor Williams' administration had many good elements about it. But I believe we agree that the people of Michigan and the State of Michigan and the Governor of Michigan did suffer because there was then divided government.

My point is that when there is malapportionment—as now exists in State after State—there is divided government. That is one of the unfortunate circumstances. That happened in Michigan; and it could very easily happen to a Republican Governor who believes deeply in such principles and, for example, felt strongly that, for one reason or another, the State should not adopt a highly progressive income tax, whereas perhaps the Democratic legislature would take the opposite point of view. The result in those circumstances could be a financial crisis, a stalemate, unfortunate for all the State's citizens.

At any rate, in view of the situation prevailing in Michigan from 1960 to the present time, I believe there are strong arguments on both sides.

From what I know of Governor Williams, he is a fine person; and today he is doing a fine job as Assistant Secretary of State. Certainly, I would be very unhappy if, from this debate, anyone were to arrive at the conclusion that I have other than great admiration for the former Governor of Michigan, now an Assistant Secretary of State, G. Mennen Williams.

Mr. MILLER. Mr. President, will the Senator from Wisconsin yield further to me?

The PRESIDING OFFICER (Mr. WALTERS in the chair). Does the Senator from Wisconsin yield to the Senator from Iowa?

Mr. PROXMIRE. I am happy to yield.

Mr. MILLER. I do not question that Mr. Williams may be a wonderful man. I concede that he is a charming man. But both of us have known charming persons who have gone broke because they did not know how to handle their finances. The only difficulty in that situation was that although he did not go broke, the State of Michigan practically did. But I am willing to admit—as I believe the Senator from Wisconsin will concede—that we were speaking of an extremely stubborn Governor.

I fully realize that there are advantages in having both the executive branch and the legislative branch under the control of the same party. But I suggest that the mere fact that there is a split—with the executive branch in the control of one party, and the legislative branch in the control of the other party—does not necessarily mean that the people will suffer. For example, there was a split between the executive branch and the legislative branch of the Federal Government in 1959, as I recall—at the time when President Eisenhower was in the White House and the Democrats were in control of Congress. Yet because of the ability of those in the White House and the Members of Congress, particularly the Members of the Senate, we were able to have a civil rights bill which I am sure the Senator from Wisconsin will admit was good for the people.

So I point this out merely to suggest that we not become too sweeping in our statements about divided responsibility.

Mr. PROXMIRE. I agree with the Senator from Iowa that there are many cases in which, with extraordinarily good leadership, forbearance, tolerance, and moderation on both sides, progress can be made with a divided government. However, divided government makes the situation much more difficult, and prevents either the one party or the other from putting a platform into effect.

During the Eisenhower administration, when there was a Democratic Congress from 1955 until 1960, we had a great leader in Lyndon Johnson. He made a very strong point of being as fair and as cooperative with the President as he possibly could. He did a magnificent job on foreign policy and on domestic policy, in working with President Eisenhower. Lyndon Johnson was the most powerful majority leader the Senate ever had. When we study history, we find there has rarely been a leader who had the great ability Lyndon Johnson had to get things done. That the country did not suffer more from divided government was a great tribute both to Lyndon Johnson and President Eisenhower.

Certainly there is a very difficult situation when, year after year, there is divided government. In that connection, I refer to the situation in 1947 and 1948, when Mr. Truman was President and when there was what he called "the do-nothing 80th Congress." Regardless of whether a good case can be made for either that Congress or the then President, certainly each one was of the opinion that the other was not doing a good job. The result was that the country did not get very much done.

My point is that if there is to be progress, it is much better to have one party have full responsibility. Then, at the next election, it can be thrown out of office if it is not doing a good job, or it can be continued in office if it is doing a good job.

Mr. MILLER. Mr. President, will the Senator from Wisconsin yield again to me?

Mr. PROXMIRE. I yield.

Mr. MILLER. I was about to take my seat. However, in view of the fact that the Senator from Wisconsin has spoken of the claim that the 80th Congress did nothing, I must point out that President Truman merely alleged that, whereas the 80th Congress was really an outstanding one, and did many excellent things. The RECORD clearly shows that.

Be that as it may, I emphasize that before we reach any conclusions on the pending business, I believe we had better be very careful that we do not base conclusions on generalities to which there are very numerous exceptions.

The Senator from Wisconsin pointed out the years when our present President, then the majority leader of the Senate, worked out matters with a Republican administration.

I suggest that this is a very good example of what I referred to in suggesting that it does not necessarily follow that because we have a divided legislature and legislative branch the people will suffer. The people may indeed benefit.

Mr. PROXMIRE. Most objective historians 25 years from now will agree that even during that period, which was a period of some congressional accomplishment, if we had had a Democratic President instead of a Republican President, we would have been able to accomplish more, and very probably, if we had had a Republican Congress, instead of a Democratic Congress with a Republican President, we would have been able to have a more coherent Congress. But I believe the Senator is correct.

Of course, we cannot say that necessarily the people will suffer deeply and tragically. I am not arguing that. I am saying that one of the arguments in favor of having the one-man, one-vote situation in our States is that there will be the greater possibility in our States of having one party in control of the governorship, the upper house, and the lower house. The government can then better assume its responsibility and move ahead to solve its problems. Under the present situation, there are great discrepancies in apportionment.

Mr. MILLER. What the Senator just said represents one argument which some political scientists have advocated, for the United States to adopt the British parliamentary situation. But I am sure the Senator from Wisconsin would not be the first to make that suggestion.

Mr. PROXMIRE. The Senator from Wisconsin is completely opposed to the British Parliament as a proposal for this country to adopt. The American system, in my judgment, is very superior.

Mr. MILLER. That is also my judgment.

Mr. PROXMIRE. It is more flexible. At the same time, there are imperfections. I believe it is proper for the Supreme Court, with the help of the Congress, to try to solve its imperfections, to keep our system, but to try to improve it.

In my judgment, there is one way in which it can be improved. As the senior Senator from Illinois [Mr. DOUGLAS] has shown so well, a situation in which 1 person has 1,000 times as much representation as another is not right. But such malapportionment is a fact in our State legislatures over and over again.

Mr. MILLER. The Senator from Wisconsin and the Senator from Iowa share the same views with regard to misrepresentation. But I hope the Senator from Wisconsin and the Senator from Iowa will be around so that we can join and prepare the book to which the Senator referred with respect to the Eisenhower years, to see whether we would have reached the same conclusion—which I doubt—namely, that had we had a Democratic President to work with a Democratic Congress, we would have had a better performance. In my judgment, history will show that the American people benefited greatly from the fact that

we had a Republican administration, and they would have benefited much more if we had had a Republican Congress for the Republican administration to work with.

I hope that we shall both be around. If we are, I shall be happy to write a book with the Senator from Wisconsin on this subject, although, we may have a difficult time in agreeing on which chapter to write. But perhaps history will be such that the Senator from Wisconsin will reach the same view that the Senator from Iowa already has reached.

Mr. PROXMIRE. I am delighted that the Senator from Iowa and the Senator from Wisconsin are on all fours. The Senator from Iowa said that we would have had better performance in 1955 through 1960 if one party had been in control. The Senator wants the Republican Party. That is understandable. He is a Republican. I say that we would have been better off if one party, the Democratic Party, had been in control during that period. However, we agree that we should have one party. We should not have a divided government.

We also agree that because of the temperance, moderation, and good sense of President Eisenhower and the majority leaders in the House and Senate, the suffering endured by the people because of a divided government was not as great as it might have been.

Nevertheless, we agree on the fundamental principle that one of the difficulties with this malapportionment, and one of the reasons why the Proxmire amendment to the Dirksen amendment should pass—or, failing that, that the Dirksen amendment should be defeated—is that if we prolong the situation and permit a constitutional amendment to be passed, we shall prolong a divided government. We shall prevent the States from solving their own problems.

I believe the Senator from Iowa, as a good Republican, believes in federalism and believes in the State assuming responsibility and solving its own problems and not deferring to Washington.

Mr. MILLER. The Senator from Wisconsin has an amendment to a pending amendment by the Senator from Illinois and the Senator from Montana.

Mr. PROXMIRE. That is correct.

Mr. MILLER. The pending amendment has nothing to do with the change in the Constitution. He has just made a statement regarding a change in the Constitution. I am not sure that I know what change the Senator refers to.

Mr. PROXMIRE. As I understand, the change in the Constitution is the whole objective of the Dirksen amendment. He is not pressing the amendment merely to waste the time of the Senate and keep the foreign aid bill from coming to a vote. He wants to postpone for 1 year the effect of the Supreme Court action requiring the States to reapportion both houses on a population basis. The Senator is very frank about it. He has said—and I am sure publicly—that during that year it would be possible, if the States desired to do so, to pass a constitutional amendment which would amend the Constitution and make it clear that the States can, if they wish to do so, have one house based on population and the other house on some other basis. I believe that is the prime objective of the amendment of the Senator from Illinois. That is the reason why I am opposed to it.

Mr. MILLER. The Senator from Wisconsin has precisely stated the matter. I regret that the distinguished senior Senator from Illinois is not in the Chamber at the moment. I regret that he did not have the same clear understanding of the constitutional amendment last night that the Senator from Wisconsin obviously has. It is said by some—perhaps the senior Senator from Illinois made this argument—that by reason of this delay, if Congress should pass a constitutional amendment early next year, it would go before the States for ratification by malapportioned legislatures.

Suppose they did. What would they be ratifying? They would be ratifying an amendment which provides that the people of a State—not the legislature, but the people of the State—will decide the composition of the second house. I cannot see anything wrong with that.

Mr. PROXMIRE. There is a great deal wrong with it. We know that this is one amendment that the State legislatures would ratify with great rapidity. They would do it because their jobs are at stake. The jobs of their friends are at stake. It affects them directly. They would not want anyone else to do the reapportioning. It will be to their benefit. They will act promptly. As was said last night, the people will decide the question. I think the Senator from Illinois was correct in saying that the majority of the people would be denied their equality of vote, and the right to have their vote count for so much. As the Senator from Illinois stated, this is an inalienable right that is possessed by everyone in the Nation.

It is absolutely fundamental in the situation which we are now discussing. The equality of vote is not only a central tenet of democracy, but it is also a right that should not be taken away even by a majority of the people. We should not do it.

My belief, as the Senator from Iowa well knows, is that we should not do it. We should abridge a person's right. This is a right that should not be denied, abridged, lessened, or reduced by the majority.

Mr. MILLER. The difficulty with the argument that the Senator has just made, and the completely non sequitur quality of the argument of the Senator from Illinois last night is that there are certain inalienable rights that should not be taken away by majority rule—we are not talking about those.

Mr. PROXMIRE. It is proposed to take them away. We are taking away the right to vote.

Mr. MILLER. Not quite.

Mr. PROXMIRE. An equal vote.

Mr. MILLER. The argument that the Senator from Wisconsin is making is that election to both houses of the State legislature should be on a popular basis. He is arguing that the second house, to which the constitutional amendment that we are talking about would apply, should be on a population basis, and that there is an inalienable right of the people of a State to have it on a population basis. Yet the Senator is turning that argument around and saying that he does not wish the majority of the people to decide the question. That does not follow.

Mr. PROXMIRE. Of course it follows. The Senator from Wisconsin is saying that every person should have an equal opportunity to elect a State senator and a State assemblyman or his State representative. He should have an equal right. As the Senator from Illinois showed so brilliantly last night, in some cases one person will have a thousand times the right that another person has. That is as wrong as it can be. The Senator from Iowa knows that it is wrong.

Mr. MILLER. The Senator from Wisconsin will not get into an argument with the Senator from Iowa on that point.

Mr. PROXMIRE. That is what we are talking about. The Senator says that a State can apportion as a majority of the people want to do it. It would be perfectly possible, with newspaper support, party support, and so forth, in State after State, that one house would not have one-man one-vote representation but representation by each county or each town having one vote. If such a system should prevail, it would be even worse than the kind of bad representation that now exists. This is a technical situation that affects legislators mightily and rank-and-file voters only indirectly, although it is enormously important to all people. It is true that a majority of the people would have a right to upset that arrangement; but because the procedure is not directly attuned to their interests, and because people are very busy and very involved in other things, it is perfectly possible that a majority of the people would because they had had too little time or opportunity to study the issue, vote those rights away for themselves as well as for their fellow citizens. I do not believe that they should do so.

Mr. MILLER. The Senator from Iowa has more confidence in the judgment of the people than has just now been expressed. I emphasize that this business of saying that people have an inalienable right to have both Houses of the legislature on a population basis, and then turning around and saying, "Oh, we do not wish the people to decide that question for themselves," does not add up, because if a majority of the people should, as a matter of inalienable right, control both houses of the legislature, it seems to me that the people themselves are entitled to decide the question for themselves—certainly with respect to the second house.

Mr. PROXMIRE. That argument is always a very appealing one. It is often said, "Leave it to a majority of the people." Would the Senator from Iowa leave to a majority of the people the decision as to whether he could practice his religion, whether he could speak his mind, or whether a newspaper should be allowed to be printed?

Mr. MILLER. The Senator from Iowa would answer that question in the following way: If a majority of the people of the United States wished to adopt a constitutional amendment which would do what the Senator has said, they have the power to do so.

Mr. PROXMIRE. I do not deny that they have the power.

Mr. MILLER. They have the power.

Mr. PROXMIRE. Certainly they do.

Mr. MILLER. If they should take such action, the Senator from Wisconsin and the Senator from Iowa might not like it. If we do not, we shall have to go to some other country.

Mr. PROXMIRE. I am sure that the Senator from Iowa would stand on the floor of the Senate and take as long as he possibly could to oppose that kind of abridgement of the right to practice one's religion. He would fight such a constitutional amendment very hard. He would not wish to be a party to it.

Mr. MILLER. That is correct.

Mr. PROXMIRE. The Senator from Wisconsin is doing that with regard to a clear right that I think is just as fundamental, and that is the right of all citizens to an equal vote in the State legislature.

Mr. MILLER. The point is that the power of our Government ultimately resides in the people.

Mr. PROXMIRE. Of course, it does. I am not disputing that the power lies in the people. The Senate has a right to shut off debate by invoking cloture, to enable it to move ahead with the proposed amendment. The people of the country have the power to adopt almost any kind of constitutional amendment that they wish to adopt.

What I am debating is the merits of the question as to whether we should do it. I do not deny the power.

Mr. MILLER. The Senator from Wisconsin will not have to worry too much about letting a majority of the people decide whether or not a majority wishes to control a second house of a legislature. I think his concern on that point is completely unfounded. If a majority of the people decide for themselves that they do not wish to control both houses of a State legislature, and that there are other factors involved in a check-and-balance system of government which is quite traditional in our American system of government, they ought to have the right to follow that principle. That is all the constitutional amendment would do.

Mr. PROXMIRE. I do not have any idea what kind of constitutional amendment might be considered next year. But I can imagine that there might very well be a situation in which the people might be given an imperfect choice. They might have a choice between a population representation in the second house or they might not be given such a choice. At any rate, the Senator from Wisconsin feels, as the Senator from Illinois has said, that there are certain inalienable rights that I do not want any majority to take away from me or any citizen and this right to vote is one of them.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. MILLER. The Senator from Wisconsin and the Senator from Illinois, I believe, made the same error when they talked about the proposed constitutional amendment being ratified quickly by malapportioned legislatures, so that the legislators could perpetuate themselves in office. How could they possibly perpetuate themselves in office if the people should decide to put both houses on a population basis? It would be impossible. That is why I say, whether the legislatures concerned are malapportioned or apportioned to perfection, if they ratify the constitutional amendment and put both houses on a population basis, they leave it to the people to decide that question. I do not see how we would have anything to worry about.

Mr. PROXMIRE. I believe there may be more merit in some constitutional amendments than in others, but I shall certainly favor no constitutional amendment which would abridge the right to vote in any way. There is no guarantee that any constitutional amendment which would pass the Senate next year would provide that the people must have a choice in deciding whether one house or both houses were on a population basis. There is no guarantee of that. We do not know what kind of constitutional amendment might come before the Senate.

Mr. MILLER. Meanwhile there is no guarantee that any amendment would be adopted.

Mr. PROXMIRE. Meanwhile, the situation arises in which the Supreme Court is told that it cannot protect what the Supreme Court considers to be a fundamental right of American citizens—the right to have equal representation in the State legislatures. That is what the Dirksen amendment would do. There is no question about it.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. MILLER. I am afraid that the matter the Senator has referred to is more theoretical than practical. As I pointed out last night in a colloquy with the Senator from Illinois, I think most of the Federal courts will be reasonable and practical. I used the example of my own State, where a three-man court ordered the Iowa Legislature to do two things: first, to adopt an interim reapportionment plan to which nominations would be made in our primary election last June and to which Representatives and Senators would be elected in the general election in November, to meet next year; second, Iowa is to have a permanent reapportionment plan to go into effect thereafter.

I cannot believe that the Senator from Wisconsin would suggest that the court now, in view of the Reynolds against Sims Supreme Court ruling, would issue an order tomorrow or next week to the Iowa Legislature to reconvene, to have 10 days to place in effect a reapportionment plan in accordance with the Supreme Court's decision, to enact a law for a special primary election 2 weeks after that, and then to have them all elected in November. I cannot believe the Senator from Wisconsin would suggest that a court is going to do that.

Mr. PROXMIRE. I agree wholeheartedly with what the Senator from Iowa has said. This is exactly why the amendment of the Senator from Illinois would be inappropriate. I rely on the prudence and wisdom of a Federal court that is on top of the situation to proceed properly. The Dirksen amendment would prevent that.

Mr. MILLER. No.

Mr. PROXMIRE. Just a moment. I have the floor. I am going to read the amendment. It provides for a stay for the period necessary—and anybody in legislature, or another, can apply for the stay—"to require any election occurring before January 1, 1966, to be conducted in accordance with the laws of such State in effect immediately preceding any adjudication of unconstitutionality and"—not only that, but in addition—"to allow the legislature of such State a reasonable opportunity in regular session or the people by constitutional amendment a reasonable opportunity following the adjudication of unconstitutionality to apportion representation in such legislature in accordance with the Constitution."

The Dirksen amendment would deny the court discretion. The court now has discretion. The courts can move ahead according to their own prudent ideas. As Chief Justice Warren said, the States can be handled on a case-by-case basis. That is being done. Now the proposal is to delay the procedure until January 1, 1966. Any member of the legislature who lost his seat because of reapportionment could stop reapportionment in his State. This is true in my own State. The amendment is going to be very destructive in Michigan and other States.

Let me read lines 6 to 9 on page 1 of the amendment:

> Any court of the United States having jurisdiction—

They all have jurisdiction in these cases—

> of an action in which the constitutionality of the apportionment of representation in a State legislature or either house thereof is drawn in question shall, upon application, stay the entry or execution of any order.

They have to stop it. This amendment deprives the courts of their discretion. That is the trouble. We are trying to do the job that the courts ought to do.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. MILLER. The Senator did not read far enough. It provides that there shall be a stay, but the Senator did not add these very important words. For how long? "A reasonable opportunity." Who is going to determine what is "a reasonable opportunity"?

Mr. PROXMIRE. Oh, no; the proposed law does that by providing that the Court is prevented from acting before January 1, 1966. That is the rest of this year and all of calendar 1965. The proposed law so provides specifically.

Mr. MILLER. The Senator from Iowa was referring to the second paragraph to which the Senator from Wisconsin referred. This was the point I thought we were talking about. The provision is that the States shall be granted a period to allow the legislature "a reasonable opportunity." The "reasonable opportunity" will be decided by the Court.

Mr. PROXMIRE. The Court could decide that now, without any interference by the Congress of the United States. On page 2, line 3, the amendment defines what a "stay" is. It reads:

A stay for the period necessary—

To permit any State election of representatives occurring before January 1, 1966.

On what basis? On the basis before the reapportionment took place. That means that the Wisconsin reapportionment, and I think that of Michigan, and I am sure of most States that are trying to comply with the order, will be thrown out the window. It would cause chaos. I think the Senator from Iowa has brought out why the Court cannot proceed prudently if the Dirksen amendment passes. Its hands are tied.

Mr. MILLER. I am pointing out that the Court is given power to proceed prudently, because the discretion of what is "a reasonable opportunity" is entirely up to the Court. It is this discretion which I think the Court ought to have and which the Dirksen amendment gives it.

Mr. PROXMIRE. If the Senator would offer an amendment, which I would be delighted to support, to strike out the language on page 2, lines 3 to 16, the amendment would not be nearly as bad as it is now. But that language is in the amendment very specifically. It provides that a stay for the period until January 1, 1966 shall be granted. There is no alternative. The stay must be granted. Reapportionment must be stopped. The States would have to go back to the situation in accordance with the laws in effect immediately preceding any adjudication of unconstitutionality. If that means anything, it means that all the reapportionments made in the States—and the UPI study said most States are complying, would be upset in order to comply with the amendment.

Mr. MILLER. The Senator apparently is referring to a part that I was not discussing.

Mr. PROXMIRE. The part I have been discussing affects the part the Senator from Iowa has been discussing.

Mr. MILLER. If the Senator were striking out anything, he would be striking out lines 9 to 16.

Mr. PROXMIRE. Would the Senator agree to eliminate lines 4 to 8?

Mr. MILLER. Would the Senator agree to leave lines 9 to 16 in?

Mr. PROXMIRE. I would be delighted to support an amendment to strike out lines 4 to 8, if that is the burden of it, because I think we would be making a little progress.

Mr. MILLER. Would the Senator leave the rest in? It provides that a reasonable opportunity will be granted. It is obviously going to be decided by the Court. I think the Senator should be consistent.

Mr. PROXMIRE. If the Senator can persuade the Senator from Illinois to delete lines 4 to 7, the Senator from Wisconsin will not talk very much. While my vote does not count for much——

Mr. MILLER. It counts as much as that of any other Senator.

Mr. PROXMIRE. Perhaps 10 or 12 other Senators will agree with the Senator from Wisconsin. Perhaps there will be fewer. If the Senator will use his offices with the minority leader to persuade him to eliminate that language, we may progress. There may be a few scattered votes against the amendment, but it would be a vast improvement.

Mr. MILLER. While the Senator from Iowa attempts to use his good offices with the minority leader, will the Senator from Wisconsin attempt to use his good offices with the majority leader, who is also a sponsor of the amendment?

Mr. PROXMIRE. I shall be delighted to do so.

Mr. MILLER. I thank the Senator.

Mr. PROXMIRE. Mr. President, the Senator from Wisconsin has been trying to argue that the stalemate which results from divided government brings atrophy to State government, because it means that in case after case—one could cite many examples, especially anyone who has served in State legislatures—the State does not act.

One of the most conspicuous examples is Michigan. During many years a fine Governor was serving while the legislature was of another party. He was not able to move ahead in solving the problems, because he would not compromise his principle and the legislature would not compromise its principle. They were of opposite parties. The result was a deadlock.

This situation is not confined to Michigan. We know that it has happened in many States. This leads to an increase in power by the Federal Government. That is something that both parties have protested.

Perhaps Republicans have been more vehement than Democrats in their protests. All of us realize that these problems should be solved at the place that is closest to the people. If we believe that, it seems to me that we should do our best to see to it that the State legislatures are apportioned in a way that will make them more responsive to the people, and more likely to be of the same party as the Governor.

Probably the most frequently quoted statement concerning this point was made by the Kestnbaum Commission. This was an outstanding Commission appointed by President Eisenhower, and headed by one of the most brilliant business-statesmen of our country, Mr. Meyer Kestnbaum. This is what it had to say about this situation:

Reapportionment should not be thought of solely in terms of a conflict of interests between urban and rural areas. In the long run, the interests of all in an equitable system of representation that will strengthen State government is far more important than any temporary advantage to an area enjoying overrepresentation.

It is unfortunate that this has not been emphasized sufficiently. There is a perfectly natural tendency on the part of many people who listen to this debate and on the part of reporters writing about the debate, whether in Congress or in State legislatures, to picture this situation as a clash between urban and suburban people on the one hand, and rural people on the other hand; between farmers and consumers; beween the cow counties and the big urban counties. This is most unfortunate, because everyone gains under fair and equal apportionment, when there is a strong State government that can meet the problems, whether they be urban or farm problems.

I have seen many cases in which the failure of Congress to act or the failure of a State legislative body to act to solve an urban problem has resulted in the urban members of the State legislature retaliating by dragging their heels when rural problems came along.

One way of preventing this kind of situation is to see that both bodies are fairly proportioned with respect to population, so that one body does not feel that it has primarily an urban responsibility and the other a primarily rural responsibility which results in a deadlock.

The Kestnbaum Commission report stated:

The problem of reapportionment is important because legislative neglect of urban communities has led more and more people to look to Washington for more and more of the services and controls they desire.

This is something that legislatures must consider very deeply. The Eisenhower-appointed Kestnbaum Commission, after making the most comprehensive study of intergovernmental relations that has been made perhaps in this century—a very comprehensive and able study by the most competent people in America—said—and I wish to quote it again:

The problem of reapportionment is important because legislative neglect of urban communities has led more and more people to look to Washington for more and more of the services and controls they desire.

Because the problems are not solved on a local basis—and they must be solved on a local basis—we must meet very difficult problems in our cities in connection with employment, delinquency, and education. They are not solved because of bad apportionment. Everyone knows it. It is because they are not solved that people look more and more to Washington. The Commission report goes on to state:

One result of State neglect of the reapportionment problem is that urban governments have bypassed the States and made direct cooperative agreements with the National Government * * * the multiplication of the national-local relationships tends to weaken the State's proper control over its policies and its authority over its own political subdivisions.

We have often heard criticism, not only in the 1940's and 1950's, but also in the 1930's, and opposition on the part of

conservatives to the State-Federal aid programs, on the ground that the Federal Government's long hand was going to dominate the State and weaken the State. There is something to that contention. However, the answer is to strengthen the State government so that it can solve these problems on a State basis. One reason it is not done is because of malapportionment.

I am talking about something that is as fundamental as can be. If the Dirksen amendment is adopted, it will be used to pass a constitutional amendment, and we shall never have the principle of one man, one vote in this country. Everyone who has followed this situation knows this. That kind of constitutional amendment will not be upset, because it would be greatly against the interest of those who serve in the State legislatures.

The report continues:

The multiplication of national-local relations does, of course, weaken the State's proper control over its own policies and its authority over its own political subdivisions. The (Kestnbaum) Commission correctly pointed out that the National Government is often more responsive to urban needs, because urban interests are frequently more effectively represented in Congress than in their own State legislatures. The same shift in population which has made our State legislatures less representative has made the Congress more representative of urban areas. For, unlike most State legislatures, the National House of Representatives has been reapportioned after almost every decennial census. Moreover, since U.S. Senators are elected at large, they have become increasingly dependent on urban voters for their election to the Senate.

We are dealing with a very practical problem that will have a great effect on the Nation for a long time.

I should like to read from the Republican platform of 1964, which was adopted last month and on which, as I understand, the Republican candidate for President, BARRY GOLDWATER, and Republican candidates for the Senate and House of Representatives will run in the fall. Under the headline "Faith in Limited Government" and under the subtitle "In Furtherance of Our Faith in Limited, Frugal and Efficient Government," there appears the following:

We also pledge revitalization of municipal and county governments throughout America by encouraging them, and private citizens as well, to develop new solutions of their major concerns through a streamlining and modernizing of State and local processes of government, and by a renewed consciousness of their ability to reach these solutions, not through Federal action, but through their own capabilities.

These are beautiful words, and they are words that many millions of Americans will enthusiastically subscribe to. However, they do not mean a thing unless the States are able to handle their problems, and unless the legislatures are responsive to the people, and are properly apportioned to meet the problems of the State.

There is no question that when there is the kind of malapportionment, the kind of emphasis on rural, antiurban apportionment that exists, these fine words in the Republican platform will not stand up. Let me repeat—"by a renewed consciousness of their ability to reach these solutions, not through Federal action, but through their own capabilities."

On that basis, it is difficult for the Senator from Wisconsin to understand how the distinguished minority leader, the leader of the Republican Party in the Senate, can propose such an amendment, when everyone who has made a study of intergovernmental relations, and everyone we can find who has made a scholarly study of apportionment agrees the State government will be more efficient, and can do a better job if it is apportioned on the basis of population.

Professor Jewell, in his recent book, copyrighted in 1962, on State legislatures, has written on this very subject. I should like to quote from him in emphasis of the fact that although many people may argue that this is a partisan issue, it definitely is not.

If anyone can believe in the sincerity of Governor Rockefeller, of New York—and I do—and of Governor Scranton, of Pennsylvania—and I do—the essence of their State responsibility creed, as they have said over and over again is that the States should solve their problems.

If this is to be done, I think we must recognize that both rural and urban persons should have an equal opportunity to be represented in State government. Professor Jewell comments briefly on that. He says:

There are essentially three ways in which a rural group might maintain its control over the legislature. Since the responsibility for reapportionment is usually delegated by the State constitution to the legislature, the majority group in the legislature could simply do nothing. A second strategy would be to secure constitutional standards for apportionment that would preserve rural control in one or both branches of the legislature. A third method would be to pass redistricting bills from time to time that gave proportionately greater representation to rural than to urban areas and perhaps favored a particular party. These techniques have sometimes been used in combination. In Illinois, for example, there was no reapportionment of the State legislature from 1901 until 1955, to the distinct disadvantage of Chicago and the other parts of Cook County. When reapportionment was finally achieved, downstate groups were able to exact a high price for it, a new constitutional provision guaranteed periodic reapportionment of the House on a population basis but established a Senate apportionment that assured a numerical majority to the downstate area.

This is another example of why the arguments that are used on the part of those who say, "Leave it to a referendum; after all, the people will decide whether they want one house based on population and the other house on some other basis," are fallacious. Those in a State legislature who believe deeply in the principle of one man, one vote, those who believe that urban people have a right to fair representation, can be blackjacked, as they were in Illinois, in a situation in which the choice given the people was a choice that resulted in predictable support for one house that is based on area, and will be based forever on area, if the proposed constitutional amendment is adopted. There will be no way of changing such an amendment once it is placed on the books, because we know that once State legislatures are given one house that may be established on some basis other than population, it will never be possible to meet the constitutional requirements that three-quarters of the State legislatures give up the privilege which those legislators have and deny many of the people who are sitting in the legislatures, and deny friends of those sitting in the legislatures, their jobs, and end their careers. They will not do it. It will mean that the amendment will be just as permanent a part of the Constitution as the one part of the Constitution that cannot be changed, namely, the part which prevents depriving a State of its two votes in the Senate.

Continuing a little further from Mr. Jewel's statement:

Though apportionment systems vary greatly in the different States, the legislative districts are always based on existing units of government, usually the counties but sometimes cities and towns. Sometimes all counties (or cities and towns) are equally represented, but the apportionment generally bears some relationship to the population of these units and consequently is supposed to vary as population changes.

The Senator from Illinois [Mr. DOUGLAS] showed last night how wide the variations are. In some States, they are as much as 1,000 to 1—in other words, one person having only one-tenth of 1 percent of the representation in a State legislature that other persons have.

I continue the statement:

Most State constitutions require periodic reapportionment of one or both houses and delegate this responsibility to the legislature. Though the language of the constitution usually makes this reapportionment mandatory (normally after the Federal census), legislative bodies have frequently delayed for many years. The example of Illinois has already been cited. Although (or perhaps because) the Tennessee constitution provides for almost no distortion in the population principle for apportionment, the legislative seats in that State were last apportioned in 1903, and house districts there vary from 3,500 to 79,000 in population. There are several other States with apportionments at least 30 years out of date.

In my judgment, a fundamental, vital, and absolutely cardinal tenet of democracy is at stake in the issue on this amendment. That is the one-man, one-vote issue. It is one that has been discussed and considered by political philosophers for centuries. It is one in which the Founding Fathers, in whom we have so much faith, and whom we cite so often, and who, we feel, performed so brilliantly in establishing this Nation, had firm and definite convictions. Those

pose taxes throughout the Nation; yet each State is to have as much sovereignty as possible. That is possible in important part, I believe, by having two Senators for each State. That arrangement is most wholesome, and I favor it.

Mr. CURTIS. Would not the Senator from Wisconsin agree that when the Federal Government was formed, the States delegated certain powers to it?

Mr. PROXMIRE. Yes.

Mr. CURTIS. In short, the Federal Government is one of delegated powers. The States never delegated to the Federal Government any power over the State constitutions—in this case, in regard to the establishment of their own legislatures—did they?

Mr. PROXMIRE. When the Constitution was written, as the Senator from Nebraska well knows, there were no constitutional amendments. The Constitution as initially created is not the same as the one we have today. As the Senator from Nebraska well knows, the original Constitution was amended, not only by the Bill of Rights—which many of us feel are among the most important provisions of the Constitution—but also by the 14th amendment, which I believe has correctly been construed by the Supreme Court of the United States as meaning that the States delegated to the Federal Government the responsibility to prohibit individual States from abridging the privileges of citizens of the United States. Certainly one such privilege is an equal vote. It is in my book just as important as the right of freedom of speech or the right of freedom of assembly or the right of freedom of the press.

Mr. CURTIS. The Senator from Wisconsin has a right to his views; but I point out that the States never provided the Federal Government with the right to provide for the State legislatures.

Mr. PROXMIRE. I think that was done my means of the 14th amendment.

Mr. CURTIS. Oh, no. The phrase "one person, one vote" is a catch phrase, but it does not have nearly the validity that is applied, for example, in a court of law, to the parties to a suit. Each party may be well represented by an attorney. The adversary party is just one person, and has perhaps one attorney; but that does not mean that the parties are denied equal rights, or that one of them has a 50-percent handicap.

The doctrine of the recent Supreme Court decision was just picked out of thin air. I do not believe there is any justification in the Constitution for the Federal Government to assert authority as to how the States shall make up their legislatures.

Mr. PROXMIRE. My answer is that I believe the 14th amendment does provide that. Some people would dispute that the 14th amendment was properly ratified; I understand that was disputed yesterday by a very distinguished Member of the other body.

I shall read the part of the amendment which I believe provides this protection:

ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall an State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

I suppose one can construe that in various ways. But it seems to me that a proper construction—and I believe a highly desirable, perfectly proper, logical construction—is that privileges of American citizen—not to be abridged by the States—include the right to an equal vote for the State legislature, if privileges or citizenship mean anything.

Mr. CURTIS. No. Equal representation does not mean that. It means that the whole body of laws will give the same protection to one citizen that it gives to another. We canot follow the argument that the Senator is advancing without coming to the conclusion that the Senate should no longer be constituted as it is, but that it should be on a population basis.

Mr. PROXMIRE. Oh, no indeed.

Mr. CURTIS. Is the 14th amendment not binding on the Federal Government?

Mr. PROXMIRE. There may be a contradiction, as there are in many of our documents. But I believe it is very clear that there are many reasons that the Senate of the United States is an eternal institution. As long as the Republic lasts, there will be a Senate of the United States. Because, of course, we cannot deprive a State of their two Senators, even by an amendment.

Mr. CURTIS. How do we know? The Supreme Court with one decision nullified many of the State constitutions. I contend that they had no authority to do it whatever. The States have never delegated authority to the Central Government to override State constitutions with regard to how the States set up their legislative bodies.

Mr. PROXMIRE. The Senator is making two arguments. One argument is that the States have never delegated the authority over a citizen's right to vote. I say that that authority was delegated in the 14th amendment. The other argument the Senator is making is that there is no real difference between the State right to have one body not based on population and the Federal right to have a Senate not based on population. I believe we all recognize that the Senate was established in the Constitution with great wisdom. I believe no one can deny that there is clear and proper element of sovereignty in the States. This is because the sovereign States surrendered part, but only part, of their sovereignty when they became States. Without this retention of sovereignty by individual States, there would have been no United States.

But where is the sovereignty of the counties, or towns, or rural areas? Where? There is not any. No county has ever created a State. States create, abolish, extend, modify counties at will. To treat them as "little States" is ridiculous.

It is true the Federal Government may delegate some of its power to the States.

Mr. CURTIS. There is no delegation to the States. The States have the power of delegating to the Federal Government.

Mr. PROXMIRE. I recognize that the Senator is making a legal argument. I am making a practical political argument. The Federal Government may under some circumstances delegate part of its taxing authority, if it may wish to do so, under some certain circumstances, and delegate other power at times.

Mr. CURTIS. That is exercising power that the States have specifically delegated to the Federal Government.

Mr. PROXMIRE. That is correct.

Mr. CURTIS. From the very beginning it was given the power to tax. By amending the Constitution, it was given the power to tax income. But they have never given them power to set up the State legislature.

I believe it is time for the whole country to serve notice on the Supreme Court that it is not a legislative body, that it is not omnipotent. States do have sovereignty. The real sovereignty rests in people. The same people that brought forth the Constitution of the United States brought forth the State constitutions. The State constitutions existed before the Federal constitution. Every new State that comes into the Union has all of the powers that each of the original 13 States had.

Mr. PROXMIRE. In reply to the Senator from Nebraska, it seems to me it is just fundamental that we should recognize that the Supreme Court of the United States has a duty to provide a protection for individual citizens, of their fundamental right—the Senator from Illinois [Mr. DOUGLAS] calls it an inalienable right. Thomas Jefferson said that the principle is as clear as it can be that there is a right of equal representation in the State legislatures.

The Senator from Nebraska may feel that that is legislation by the Supreme Court. I feel that it is an action in complete compliance with their duty and obligation under the 14th amendment to the Constitution.

PUBLIC WORKS APROPRIATION BILL, 1965—CONFERENCE REPORT

Mr. ELLENDER. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11579) making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atomic Energy Commission,